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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)

Biennial Regulatory Review -- Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95,)
97 and 101 of the Commission's Rules to)
Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

AMERICAN PETROLEUM INSTITUTE

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SUMMARY

In its initial Comments, API offered a number of recommendations and safeguards aimed at promoting a smooth transition to the ULS and preventing potential abuses and inequities stemming from the Commission's proposed new rules. Many of API's positions were echoed by a substantial number of other commenting parties, including its proposals that the Commission: delay the onset of mandatory electronic filing; retain the existing ownership reporting requirements in the private, non-auctionable radio services; abandon its plan to eliminate the 30-day license reinstatement option in the private wireless services; and allow applicants 60 days to resubmit applications that have been returned by the Commission as defective.

Additionally, API supports the following views and proposals expressed by other parties in their Comments: (1) the public should be able to access the ULS over the World Wide Web; (2) the Commission should reduce or eliminate on-line access fees to the ULS database; (3) there should be no new application or filing fees associated with electronic filing via the ULS; (4) the Commission should move forward with its proposal to require notification of consummation of assignments and transfers of control; (5) there should be a transition period prior to requiring the submission of all coordinate data using NAD83 measurements; (6) the Commission should not eliminate Public Notices with respect to private applications in the Fixed Microwave Services; (7) conditional licensing

authority should be extended to applicants for Multiple Address Systems and 900 MHz point-to-point systems; (8) the Commission should continue to accept manually filed STA Requests unless and until the ULS is equipped to handle "emergency" STAs; and (9) e-mail should not be the only means of notifying licensees of important deadlines.

On the other hand, API strongly opposes the request of one commenter that the Commission allow a geographic licensee to operate -- without prior Commission consent -- in the area previously served by a co-channel incumbent in the geographic licensee's service area if the geographic licensee reasonably determines that the co-channel incumbent is not in operation. Further, API supports the Commission's proposal to require licensees to certify compliance with construction and coverage requirements, provided that licensees are given adequate opportunities to demonstrate compliance prior to the initiation of license termination procedures.

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The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Reply Comments regarding Comments filed by other participants in response to the Commission's *Notice of Proposed Rule Making ("Notice")*^{1/} in the above-referenced proceeding.

^{1/} 63 Fed. Reg. 16938 (April 7, 1998). By Order dated May 4, 1998, the Commission extended the deadline for filing Reply Comments in this matter from May 22, 1998 to June 8, 1998. The deadline was further extended to June 16, 1998 by the Commission's Order dated June 5, 1998 (DA 98-1068).

I. REPLY COMMENTS

A. Electronic Filing

1. In its Comments, API urged the Commission to institute various safeguards to prevent abuses and inequities stemming from the adoption of mandatory electronic filing. These proposed safeguards included: (1) verification procedures to prevent the filing of fraudulent applications for license assignment; (2) the postponement of the onset of mandatory electronic filing until six months after the Commission's new rules regarding the Universal Licensing System ("ULS") are published in the Federal Register; and (3) the establishment of a 24-hour "grace period" for parties who miss electronic filing deadlines due to unforeseeable technical problems.

2. A substantial number of other commenting parties expressed similar concerns regarding the proposed implementation of mandatory electronic filing on January 1, 1999. For instance, many parties urged the Commission to continue accepting manually filed applications indefinitely, to postpone the onset of mandatory electronic filing until the Commission has ironed out all "bugs" in the ULS and/or to accept paper filings in unusual circumstances, even after mandatory electronic filing has been implemented.^{2/} While API believes that electronic filing will be a great asset to

^{2/} See, e.g., Comments of National Spectrum Managers Association ("NSMA") at 2-3; Myers Keller Communications Law Group ("MKCLG") at 2; AirTouch Communications
(continued...)

applicants, licensees and the Commission once it is fully implemented, all technical problems have been resolved and all database records have been updated, API strongly encourages the Commission to proceed with caution at this time and to allow an appropriate transition period during which the public can become familiar with the system without the risk of missing important filing deadlines due to system failures or a lack of understanding of the Commission's new procedures.

3. API also agrees with those commenters who noted that use of the ULS would be greatly facilitated if the public were able to access it directly through the World Wide Web, rather than being required to dial into the Commission's Wide Area Network.^{3/} As BellSouth noted in its Comments, concerns about security can be addressed by using an encrypted connection to the ULS via a secure server and through the use of firewalls and similar security devices. (Comments of BellSouth at 6).

^{2/} (...continued)

("AirTouch") at 3-4; BellSouth Corporation ("BellSouth") at 7-9; SBC Communications Inc. ("SBC") at 6-8; American Mobile Telecommunications Association, Inc. ("AMTA") at 3-4; Alarm Industry Communications Committee ("AICC") at 2-4; American Automobile Association ("AAA") at 2-4; Association of Public-Safety Communications Officials-International, Inc. at 3-4; AT&T Wireless Services, Inc. ("AWS") at 8; Bell Atlantic Mobile, Inc. ("BAM") at 6-8; Bennet & Bennet, PLLC ("Bennet & Bennet") at 4; Federal Communications Bar Association ("FCBA") at 7-10; Forest Industries Telecommunications ("FIT") at 6; Nextel Communications, Inc. ("Nextel"); Personal Communications Industry Association ("PCIA") at 4-5; UTC, The Telecommunications Association ("UTC") at 2-3.

^{3/} See Comments of BellSouth at 5-6; SBC at 7; FCBA at 11-13; FIT at 7; UTC at 3-4.

B. Fee Issues

4. Implementation of the ULS ultimately should reduce the Commission's administrative costs associated with licensing matters. As a result, API does not believe it is appropriate for the Commission to charge the public the substantial fee of \$2.30/minute for on-line access to licensing data. Rather, the Commission should, as several commenting parties have suggested, either eliminate or significantly reduce these fees and/or offer a flat, subscription rate to heavy system users.^{4/} As a related matter, API believes that if licensees are required to use application forms for matters that until now have been handled by letter filings without any associated fee (e.g., licensee change of name or address notifications), there should be no fees imposed in connection with the filing of such applications.^{5/} In other words, the ULS should not be a means for imposing new types of fees on applicants and licensees.

C. Unauthorized Expansion of Geographic Operations

5. Paging Network, Inc. ("PageNet") argued in its Comments that the Commission should allow a geographic licensee to operate -- without prior Commission consent -- the area previously served by a co-channel incumbent in the geographic licensee's service area if the geographic licensee determines "after reasonable

^{4/} See Comments of FCBA at 13-14; UTC at 3-4; MKCLG at 3; Bennet & Bennet at 5.

^{5/} Accord, Comments of SBC at 16; Nextel at 5; BellSouth at 2-4.

investigation" that the co-channel incumbent is not in operation. (Comments of PageNet at 3). **API strongly urges the Commission to reject this proposal.**

6. To begin with, the adoption of such a rule would constitute a major substantive rule change and would, therefore, be well beyond the scope of this proceeding. (See Notice at ¶ 33). Moreover, it is responsibility of the Commission, rather than a licensee, to make the ultimate determination as to whether another licensee has failed to comply with the Commission's rules and should be subject to license cancellation. API also notes that, at least in some radio services in which incumbents are licensed, the licensee is not subject to license cancellation for permanent discontinuation of operations unless it has failed to operate for a period of at least one year. (See, e.g., 47 C.F.R. § 101.65(d).) Accordingly, a geographic licensee could not reasonably determine after only isolated instances of monitoring that the incumbent was not "in operation" under the Commission's rules. While PageNet states that the geographic licensee could be required to immediately terminate co-channel operations in the incumbent's service area in the event that the geographic licensee mistakenly concluded that the incumbent was not operating, API believes that this would be insufficient protection for the incumbent, which could suffer serious consequences as a result of even a single instance of harmful interference to its operations.

D. Verifying Compliance With Construction Requirements

7. The Commission proposed in its *Notice* to require licensees to verify via the ULS that they have met all applicable construction or coverage requirements and to implement automatic license termination procedures for failure to submit such a verification in a timely manner. (*Notice* at ¶¶ 60-61). Some commenters expressed support for these proposals as a means of preventing spectrum warehousing and promoting efficient spectrum use.^{6/} Other parties opposed such measures either because they believe that the filing of the verification notification would be an unnecessary regulatory burden on licensees or because they are concerned that automatic license cancellation could unduly disrupt the operations of licensees that have in fact constructed their systems but failed, for whatever reason, to file the requisite verification form.^{7/}

8. API believes that the appropriate approach must balance the public's interest in efficient spectrum use against the potential consequences of terminating a licensee's authorization for failure to comply with an isolated procedural requirement. Such balance is best achieved by requiring licensees to verify compliance through a simple notification process, but providing licensees who fail to file a timely notification

^{6/} See, e.g., Comments of CellNet at 4-5; FIT at 16.

^{7/} See, e.g., Comments of AirTouch at 5; BellSouth at 16-17; AICC at 8; FCBA at 41-42.

form with adequate opportunities to demonstrate compliance prior to the initiation of license termination procedures. (See initial Comments of API at 12-13.)

E. Reporting of Ownership Information

9. As API pointed out in its Comments, there is absolutely no justification for the Commission to impose any additional ownership reporting requirements on applicants and licensees in non-auctionable radio services that use their licensed spectrum primarily for private, internal (i.e., non-commercial) communications. (Comments of API at 7-8.) Many other commenting parties agreed with API's position.^{8/} Further, while some parties noted support for the "standardization" of ownership reporting obligations among all wireless licensees,^{9/} they did not present any valid justification for imposing such an increased regulatory burden on private licensees who are not subject to any spectrum caps, cross-ownership restrictions, "small business" bidding credits or other regulatory or statutory provisions that might warrant the collection of additional ownership information. In light of the foregoing, API urges the Commission to eliminate

^{8/} See, e.g., Comments of Affiliated American Railroads at 4-10; AICC at 9-10; AAA at 9-10; FIT at 4 and 13-14; Motorola, Inc. at 10; PCIA at 12; UTC at 4-6.

^{9/} See Comments of BellSouth at 14-15; SBC at 16; Nextel at 5-6. It is ironic that commenters such as BellSouth oppose as over-regulatory various contemplated rule changes that would impose only minimal burdens on licensees (e.g., requiring notification of consummation of assignments and transfers of control), while advocating the imposition of substantial (and unjustified) additional burdens on private licensees.

proposed rule Section 1.919(e)(2) and to clarify that private licensees in non-auctionable services are not required to file proposed FCC Form 602.

F. Consummation of License Assignments and Transfers of Control

10. API agrees with the FCBA that the Commission's existing procedure of automatically altering its license records to reflect granted applications for consent to license assignments and transfers of control -- whether or not those transactions have been consummated -- "has caused considerable difficulties."^{10/} As a matter of both law and logic, it is simply more appropriate for the Commission to wait until receiving verification that the underlying transaction actually has occurred before changing its database in a manner that substantially impacts the rights and responsibilities of interested parties. Further, although the requirement to file a notification of consummation may constitute an additional regulatory burden to some licensees, it is certainly less of a burden than the necessity of filing an application to re-assign all of an entity's licenses or undo a transfer of control. To address the concern of certain commenting parties that requiring verification of consummation within 60 days of Public Notice of FCC approval of the transaction (see proposed rule Section 1.948(c)) will necessitate repeated requests for extension (given that consummation dates are often

^{10/} Comments of FCBA at 32. See also Comments of Affiliated American Railroads at 10-11; AWS at 9.

delayed),^{11/} API proposes that the Commission provide a substantially longer period -- perhaps up to one year -- for the filing of consummation notifications.

G. Conversion to NAD83

11. Like a number of other commenting parties, API is concerned that the Commission's proposal to require the submission of all site coordinate data using 1983 North American Datum ("NAD83") measurements -- without the institution of an adequate transition period -- may result in substantial confusion stemming from the fact that the Commission's existing licensing records rely primarily on NAD27 data.^{12/} To address this problem, the Commission must undertake the conversion to NAD83 of all existing records before it begins requiring applicants and licensees to use NAD83 data.

12. Additionally, API agrees with PCIA that conversions from NAD27 to NAD83 must not be the basis for license revocation proceedings in instances where a change in coordinates may appear to place the licensee in violation of the Commission's rules (e.g., by impacting mileage separation between co-channel or adjacent channel licensees). Similarly, the requisite conversion to NAD83 data -- regardless of the extent

^{11/} See Comments of BellSouth at 17-19.

^{12/} See, e.g., Comments of NSMA at 13; PageNet at 6; BellSouth at 19; SBC at 15; BAM at 14; Comsearch at 5; FCBA at 42; FIT at 17; PCIA at 10-11; UTC at 9.

of the differential between the "old" and "new" coordinates -- must not result in the conferral of "secondary status" upon incumbent site-based licensees in spectrum bands that have been or will be subject to auctions.^{13/}

H. Other Issues

13. Microwave Public Notices. API urges the Commission to continue issuing Public Notices for private (non-common carrier) applications in the Fixed Microwave Services, even though it is no longer mandated by statute to do so. As NSMA and Comsearch explained in their Comments, such Public Notices provide frequency coordinators, applicants and licensees with essential information and an opportunity to correct errors and resolve potential interference problems prior to license grant.^{14/} Given the advent of the ULS and electronic filing, the Commission should be in a position to generate these Public Notices automatically, with minimal administrative burden.

14. Conditional Licensing. API supports UTC's proposal that the Commission extend conditional licensing authority under section 101.31(e) of its rules to

^{13/} Under Section 101.81 of the Commission's rules, incumbent licensees in the 1850-1990 MHz, 2110-2150 MHz and 2160-2200 MHz bands may lose their primary status if they make "major modifications" to their authorizations.

^{14/} Comments of NSMA at 4-5; Comments of Comsearch at 2.

applicants for Multiple Address Systems ("MAS") and 900 MHz point-to-point systems. So long as certain pre-conditions are satisfied, such as compliance with the Commission's frequency coordination requirements, the grant of such conditional licensing authority would confer great benefits on applicants (through the prompt initiation of operations and the reduction of administrative burdens) without posing any potential harm to incumbent licensees or other applicants.

15. STA Requests. The Commission has asked whether it should eliminate letter requests and instead require the filing of formal applications (via the ULS) for matters such as Requests for Special Temporary Authorization ("STA"). (*Notice* at ¶ 29.) Noting the sometimes urgent nature of STA Requests, some commenters have urged the Commission either to ensure that the ULS will promptly alert the Commission's staff to the filing of such requests or to continue to allow the manual filing of such requests by letter, at least until the ULS is equipped to handle "emergency" STAs.^{15/} API concurs that such precautions are necessary to prevent inadvertent delays by the Commission in responding to STA Requests that require immediate attention. Additionally, API agrees with FIT that proposed rule Section 1.931(b) improperly limits the circumstances in which STA may be granted to emergencies and other narrowly specified situations.

^{15/} See, e.g., Comments of Electronic Engineering Company ("EEC") at 8; GTE Service Corporation at 12-13; FCBA at 24; Porter Communications, Inc. at 8; Paging Associates, Inc. at 8.

STAs also should be permitted, where good cause is shown, pending the filing and/or grant of an application for permanent authorization.

16. Reinstatement Applications. The Comments of API and numerous other parties opposed the Commission's proposal to eliminate the 30-day license reinstatement option currently available in the Private Land Mobile Radio Services and Fixed Microwave Services.^{16/} In this era of mergers, acquisitions and internal corporate restructurings, inadvertent license expirations are, at times, inevitable. The Commission should not elevate form over substance by punishing otherwise compliant licensees with immediate and automatic license cancellation for failure to file a timely renewal application. The contemplated discontinuance of the 30-day "grace period" presently provided for the reinstatement of expired authorizations likely would result in unnecessary disruptions to private operations that serve critical safety and environmental functions, while imposing increased administrative burdens on the Commission due to the filing of a host of Petitions for Reconsideration.

17. Resubmission of Applications. As API argued in its initial Comments, the Commission should continue to afford applicants 60, rather than 30, days to resubmit applications that have been returned by the Commission as defective, without losing their

^{16/} See Comments of API 11-12; NSMA at 13; SBC at 13-14; AMTA at 6; AICC at 8-9; AAA at 8; Bennet & Bennet at 6; FCBA at 39-40; FIT at 15-16; PCIA at 9; WinStar Communications Inc. ("WinStar") at 10-11.

original place in the Commission's processing order or being required to pay an additional application fee. Many other commenting parties shared API's concerns regarding the proposed shortening of the application resubmission period.^{17/} In this regard, Motorola correctly noted that, particularly where certification from a frequency coordinator is required, it will often be impossible for the applicant to resubmit its application within 30 days. (Comments of Motorola at 5-6.) Under such circumstances, it is unfair to require the applicant to pay another application fee and incur potentially substantial delays in the processing of its application. As a related matter, API agrees with the FCBA that, following the implementation of the ULS, the Commission should continue to rely on informal telephone contacts with applicants to correct minor errors on their application forms, rather than returning such applications as a matter of course. (Comments of FCBA at 38.)

18. E-mail Notifications. Several commenters urged the Commission not to rely on e-mail as the only means of notifying licensees of important dates such as license expirations and construction deadlines.^{18/} While e-mail is often a convenient and efficient mode of communication, anyone who has used it likely has become familiar with its various potential pitfalls, including lost or delayed messages, other network malfunctions

^{17/} See, e.g., Comments of AICC at 9; AAA at 9; FIT at 15; Motorola at 5-6; PCIA at 9; WinStar at 12.

^{18/} See, e.g., Comments of EEC at 9; NSMA at 13; BellSouth at 25-26; AICC at 7; AAA at 7; PCIA at 7.

and the difficulty of accessing an e-mail account from a remote location. Accordingly, API agrees that -- at least for the foreseeable future -- the Commission should continue to use "regular mail" as a backup means of notifying licensees who wish to receive e-mail notifications.

II. CONCLUSION

19. API commends the Commission's efforts to implement the ULS and electronic filing and to streamline and consolidate its application and licensing rules for the various wireless radio services. Given the monumental nature of these tasks, however, API strongly urges the Commission to proceed cautiously and to allow adequate periods of transition during which both the Commission and interested members of the public can become familiar with the new procedures, and technical problems with the ULS can be resolved. To maximize both fairness and efficiency with respect to wireless applicants and licensees and their critical operations, API also asks the Commission to consider the various positions and proposals expressed above regarding specific issues raised in the Commission's *Notice* in this proceeding.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Reply Comments and urges the Federal

Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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